

AMENDED IN ASSEMBLY JULY 3, 2003  
AMENDED IN ASSEMBLY JUNE 16, 2003  
AMENDED IN SENATE APRIL 29, 2003  
AMENDED IN SENATE MARCH 27, 2003

**SENATE BILL**

**No. 418**

**Introduced by Senator Sher**

February 20, 2003

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An act to repeal and add Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code, relating to fish and wildlife, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 418, as amended, Sher. Fish and wildlife: streambed alteration agreements.

(1) Existing law requires a governmental agency or public utility that proposes a project that would divert, obstruct, or change the natural flow of, or result in the disposal of debris in, a river, stream, or lake designated by the Department of Fish and Game, to submit prescribed plans and other information to the department, and to follow prescribed procedures. Under existing law, a violation of the Fish and Game Code is a crime.

This bill would revise that proposal process by doing all of the following:

- (a) Define various terms.
- (b) Clarify the notification and determination procedure, including prescribing deadlines throughout the process and making it uniform as to all applicants.

(c) Modify the existing arbitration process, including requiring that one arbitration panel member have relevant scientific expertise.

(d) Authorize the director of the department to establish a graduated schedule of fees that may be charged for administering and enforcing the process, and would limit the amount of the fee charged for any agreement to \$5,000.

(e) Require that a holder of an agreement to alter a streambed remain responsible for implementing any mitigation or other measures necessary to protect fish and wildlife resources after the agreement has expired.

(f) Authorize the department to extend the agreement for up to 5 years, and would establish the procedures for that extension.

(g) *Authorize the department to issue an agreement for a term longer than 5 years, under certain conditions.*

(h) Authorize the department to suspend or revoke an agreement if the agreement holder is not in compliance with the terms of the agreement.

(i) *Prescribe the manner in which civil actions are initiated and penalties are determined and disbursed.*

To the extent this bill would provide for additional criminal prosecutions for violations of the bill, it would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) Existing law continuously appropriates money in the Fish and Game Preservation Fund to the department to pay all necessary expenses incurred in carrying out the Fish and Game Code. Unless otherwise provided, all money collected under the code is deposited in the fund.

By imposing new duties on the department, and potentially increasing revenues deposited in the fund, the bill would make an appropriation.

Vote: majority. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.



*The people of the State of California do enact as follows:*

SECTION 1. Chapter 6 (commencing with Section 1600) of Division 2 of the Fish and Game Code is repealed.

SEC. 2. Chapter 6 (commencing with Section 1600) of Division 2 is added to the Fish and Game Code, to read:

CHAPTER 6. FISH AND WILDLIFE PROTECTION AND  
CONSERVATION

1600. The Legislature finds and declares that the protection and conservation of the fish and wildlife resources of this state are of utmost public interest. Fish and wildlife are the property of the people and provide a major contribution to the economy of the state, as well as providing a significant part of the people's food supply; therefore their conservation is a proper responsibility of the state. This chapter is enacted to provide conservation for these resources.

1601. The following definitions apply to this chapter:

(a) "Agreement" means a lake or streambed alteration agreement.

(b) "Day" means calendar day.

(c) "Emergency" has the same definition as in Section 21060.3 of the Public Resources Code.

(d) "Entity" means any person, state or local governmental agency, or public utility that is subject to this chapter.

1602. (a) It is unlawful for any entity to substantially divert or obstruct the natural flow of, or substantially change or use any material from; the bed, channel, or bank of, any river, stream, or lake designated by the department in which there is at any time an existing fish or wildlife resource or from which an existing fish or wildlife resource derives benefit, or to deposit or dispose of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake designated by the department, unless all of the following occur:

(1) The department receives written notification regarding the activity; in the manner prescribed by the department.

(2) The department determines the notification is complete in accordance with Chapter 4.5 (commencing with Section 65920) of Division 1 of Title 7 of the Government Code, irrespective of

1 whether the activity constitutes a development project for the  
2 purposes of that chapter.

3 (3) The entity pays the applicable fees, pursuant to Section  
4 1609.

5 (4) One of the following occurs:

6 (A) The department ~~determines~~ *notifies the entity, in writing,*  
7 *that the activity will not substantially adversely affect an existing*  
8 *fish or wildlife resource. The department shall post the notice for*  
9 *60 days from the date it was issued in the regional office issuing*  
10 *the notice, and shall provide a copy of the notice to any person*  
11 *upon written request.*

12 (B) The department determines that the activity may  
13 substantially adversely affect an existing fish or wildlife resource  
14 and issues a final agreement to the entity that includes reasonable  
15 ~~measures necessary to protect any fish and wildlife resources that~~  
16 ~~the activity might substantially adversely affect, and the entity~~  
17 *measures necessary to protect the resource, and the entity* conducts  
18 the activity in accordance with the agreement.

19 (C) A panel of arbitrators issues a final agreement to the entity  
20 in accordance with subdivision (b) of Section 1603, and the entity  
21 conducts the activity in accordance with the agreement.

22 (D) The department does not issue a draft agreement to the  
23 entity within 60 days from the date ~~the department receives a~~  
24 ~~complete notification, and~~ *notification is complete, and* the entity  
25 conducts the activity in accordance with the notification, including  
26 any measures that are intended to protect fish and wildlife  
27 resources.

28 (b) (1) If an activity involves the routine maintenance and  
29 operation of water supply, drainage, flood control, or waste  
30 treatment and disposal facilities, notice to and agreement with the  
31 department shall not be required after the initial notification and  
32 agreement, unless the department determines any one of the  
33 following:

34 (A) The work described in the agreement has substantially  
35 changed.

36 (B) Conditions affecting fish and wildlife resources have  
37 substantially changed, and those resources are adversely affected  
38 by the activity conducted under the agreement.

39 (C) The agreement otherwise needs to be modified to protect  
40 fish and wildlife resources.

(2) This subdivision applies only if notice to, and agreement with, the department was attained prior to January 1, 1977, and the department has been provided a copy of the agreement.

(c) State and local governmental agencies, public utilities, and their employees, agents, or contractors acting within the scope of their employment, agency, or contract, shall not be subject to criminal liability for violating this chapter, but may be liable under Section 1615.

1603. (a) After ~~the department determines that~~ the notification is complete, the department shall determine whether the activity may substantially adversely affect an existing fish and wildlife resource. If the department determines that the activity may have that effect, the department shall provide a draft agreement to the entity within 60 days ~~of making that determination~~ *after the notification is complete*. The draft agreement shall describe the fish and wildlife resources that the department has determined the activity may substantially adversely affect and include measures to protect those resources. The department's description of the affected resources shall be specific and detailed, and the department shall make available, upon request, the information upon which its determination of substantial adverse effect is based. Within 30 days of the date of receipt of the draft agreement, the entity shall notify the department whether the measures to protect fish and wildlife resources in that draft agreement are acceptable. If the department's measures are not acceptable, the entity shall so notify the department in writing and specify the measures that are not acceptable. Upon written request, the department shall meet with the entity within 14 days of the date the department receives the request for the purpose of resolving any disagreement regarding those measures. If the entity fails to respond in writing within 90 days of receiving the draft agreement, the department may withdraw that agreement, and require the entity to resubmit a notification to the department before commencing the activity.

(b) If mutual agreement is not reached at any meeting held pursuant to subdivision (a), the entity may request, in writing, the appointment of a panel of arbitrators to resolve the disagreement. A panel of arbitrators shall be appointed within 14 days of receipt of the written request. The panel of arbitrators shall be comprised of three persons, as follows: one representative selected by the

1 department; one representative selected by the affected entity; and  
2 a third person mutually agreed upon by the department and the  
3 entity, who shall serve as the panel chair. If the department and the  
4 entity cannot agree on the third person within that 14-day period,  
5 the third person shall be appointed in the manner provided by  
6 Section 1281.6 of the Code of Civil Procedure. The third person  
7 shall have scientific expertise relevant to the fish and wildlife  
8 resources that may be substantially adversely affected by the  
9 activity proposed by the entity. The authority of the panel of  
10 arbitrators is limited to resolving disagreements regarding the  
11 measures specified in ~~subparagraph~~ *subdivision* (a), and  
12 ~~subdivision (b) of Section 1615~~ *subdivisions (b) and (g) of Section*  
13 *1605*, and, in the case of an extension, whether or not the  
14 agreement needs to be modified to protect fish and wildlife  
15 resources. Any decision by the panel of arbitrators shall be binding  
16 on the department and the affected entity, shall be based on the best  
17 scientific information reasonably available at the time of the  
18 arbitration, and, except for a decision to extend an agreement  
19 without modification, shall be made in the form of a final  
20 agreement. The final agreement issued by the panel shall also  
21 include, without modification, all measures that were not subject  
22 to arbitration. Each party shall pay the expenses of their selected  
23 representative and pay one-half the expenses of the third person.

24 1604. Any party affected by a decision made by an arbitration  
25 panel pursuant to this chapter may petition a court of competent  
26 jurisdiction for confirmation, correction, or vacation of the  
27 decision in accordance with Chapter 4 (commencing with Section  
28 1285) of Title 9 of Part 3 of the Code of Civil Procedure.

29 1605. (a) (1) Except as otherwise provided in this section,  
30 the term of an agreement shall not exceed five years.

31 (2) Notwithstanding paragraph (1), *after the agreement*  
32 *expires*, the entity shall remain responsible for implementing any  
33 mitigation or other measures *specified in the agreement* to protect  
34 fish and wildlife resources ~~after the agreement expires~~.

35 (b) Any entity may request one extension of a  
36 previously-approved agreement, if the entity requests the  
37 extension prior to the expiration of ~~the original term of the~~  
38 ~~agreement~~ *its original term*. The department shall grant the  
39 extension unless it determines that the agreement requires  
40 modification because the measures contained in the agreement no

1 longer protect the fish and wildlife resources that the activity may  
2 substantially adversely affect. In the event the department makes  
3 that determination, the department shall propose measures  
4 intended to protect those resources.

5 (c) If the entity disagrees with the department's determination  
6 that the agreement requires modification to protect fish and  
7 wildlife resources or with the measures proposed by the  
8 department, the disagreement shall be resolved pursuant to the  
9 procedures described in subdivision (b) of Section 1603.

10 (d) The department may not extend an agreement for more than  
11 five years.

12 (e) (1) An original agreement shall remain in effect until the  
13 department grants the extension request, or new measures are  
14 imposed to protect fish and wildlife resources by agreement or  
15 through the arbitration process.

16 (2) Notwithstanding paragraph (1), an original agreement may  
17 not remain in effect for more than one year after its expiration date.

18 (f) If the entity fails to submit a request to extend an agreement  
19 prior to its expiration, the entity shall submit a new notification  
20 before commencing or continuing the activity covered by the  
21 agreement.

22 ~~(g) \_\_\_\_\_.~~

23 (g) *Notwithstanding paragraph (1) of subdivision (a), the*  
24 *department may issue an agreement for a term longer than five*  
25 *years if the following conditions are satisfied:*

26 (1) *The information the entity provides to the department in its*  
27 *notification is, at a minimum, as complete as a notification for an*  
28 *agreement of less than five years.*

29 (2) *The entity agrees to provide a status report to the*  
30 *department every four years. The status report shall be delivered*  
31 *to the department within 60 days of the end of each four-year*  
32 *period, and shall include all of the following information:*

33 (A) *A copy of the original agreement.*

34 (B) *The status of the activity covered by the agreement.*

35 (C) *An evaluation of the success or failure of the measures in*  
36 *the agreement to protect the fish and wildlife resources that the*  
37 *activity may substantially adversely affect.*

38 (D) *A discussion of any factors that could increase the*  
39 *predicted adverse impacts on fish and wildlife resources, and a*  
40 *description of the resources that may be adversely affected.*



(3) *The department shall review the four-year status report, and conduct an onsite inspection to confirm that the entity is in compliance with the agreement and that the measures in the agreement continue to protect the fish and wildlife resources. If the department determines that the measures in the agreement no longer protect fish and wildlife resources, the department, in consultation with the entity, shall impose new measures to protect fish and wildlife resources. If, within 30 days of receipt of the new proposed measures, the entity notifies the department, in writing, that the measures are not acceptable, the disagreement shall be resolved pursuant to the procedures described in subdivision (b) of Section 1603. Upon receiving notification from the department that new measures will be imposed, the entity may not continue the activity beyond 60 days from the day of the notification, until the department issues an amended agreement that incorporates the new measures or an arbitration panel has issued a final agreement. If the entity fails to provide timely status reports as required by this subdivision, the department may suspend or revoke the agreement.*

(4) *The agreement shall authorize department employees to conduct onsite inspections relevant to the agreement, upon reasonable notice.*

1606. The department shall not condition the issuance of an agreement on the receipt of another local, state, or federal permit.

1607. Any time period prescribed in this chapter may be extended by mutual agreement.

1608. The department shall provide any entity that submits a notification pursuant to Section 1602 with all of the following information:

(a) The time period for review of the notification.

(b) An explanation of the entity's right to object to any measures proposed by the department.

(c) The time period within which objections may be made in writing to the department.

(d) The time period within which the department is required to respond, in writing, to the entity's objections.

(e) An explanation of the right of the entity to arbitrate any measures in a draft agreement.

(f) The procedures and statutory timelines for arbitration, including, but not limited to, information about the payment requirements for arbitrator fees.



(g) The current schedule of fees to obtain an agreement.

1609. (a) The director may establish a graduated schedule of fees to be charged to any entity subject to this chapter. The fees charged shall be established in an amount necessary to pay the total costs incurred by the department in administering and enforcing this chapter, including, but not limited to, preparing and submitting agreements and conducting inspections. The department may adjust the fees pursuant to Section 713. Fees received pursuant to this section shall be deposited in the Fish and Game Preservation Fund.

(b) (1) The fee schedule established pursuant to subdivision (a) may not impose a fee that exceeds five thousand dollars (\$5,000) for any agreement.

(2) The fee amount limitation described in paragraph (1) does not apply to any agreement issued pursuant to subdivision (g) of Section 1605.

1610. (a) Except as provided in subdivision (b), this chapter does not apply to any of the following:

(1) Immediate emergency work necessary to protect life or property.

(2) Immediate emergency repairs to public service facilities necessary to maintain service as a result of a disaster in an area in which a state of emergency has been proclaimed by the Governor pursuant to Chapter 7 (commencing with Section 8550) of Division 1 of Title 2 of the Government Code.

(3) Emergency projects undertaken, carried out, or approved by a state or local governmental agency to maintain, repair, or restore an existing highway, as defined in Section 360 of the ~~Vehicle Code. This paragraph does not include a highway designated as an official state scenic highway pursuant to Section 262 of the Streets and Highways Code, within the existing Vehicle Code, within the existing~~ right-of-way of the highway, that has been damaged as a result of fire, flood, storm, earthquake, land subsidence, gradual earth movement, or landslide, ~~in the year prior to the application~~ *within one year of the damage*. Work needed in the vicinity above and below a highway may be conducted outside of the existing right-of-way if it is needed to stop ongoing or recurring mudslides, landslides, or erosion that pose an immediate threat to the highway, or to restore those roadways damaged by mudslides, landslides, or erosion to their predamage condition and

1 functionality. This paragraph does not exempt from this section  
2 any project undertaken, carried out, or approved by a state or local  
3 governmental agency to expand or widen a highway damaged by  
4 fire, flood, storm, earthquake, land subsidence, gradual earth  
5 movement, or landslide. *The exception provided in this paragraph*  
6 *does not apply to a highway designated as an official state scenic*  
7 *highway pursuant to Section 262 of the Streets and Highways*  
8 *Code.*

9 (b) The entity performing the emergency work described in  
10 subdivision (a) shall notify the department of the work, in writing,  
11 within 14 days of beginning the work. *Any work described in the*  
12 *emergency notification that does not meet the criteria for the*  
13 *emergency work described in subdivision (a) is a violation of this*  
14 *chapter if the entity did not first notify the department in*  
15 *accordance with Section 1602.*

16 1611. (a) An entity that submits a timber harvesting plan in  
17 accordance with Section 4581 of the Public Resources Code or  
18 directly to the department is deemed to have given the notification  
19 required by Section 1602, as long as the following information is  
20 included in the plan:

21 (1) The volume, type, and equipment to be used in removing or  
22 displacing any one or combination of soil, sand, gravel, or  
23 boulders.

24 (2) The volume of water, intended use, and equipment to be  
25 used in any water diversion or impoundment, if applicable.

26 (3) The equipment to be used in road or bridge construction.

27 (4) The type and density of vegetation to be affected and an  
28 estimate of the area involved.

29 (5) A diagram or sketch of the location of the operation that  
30 clearly indicates the stream or other water and access from a named  
31 public road. Locked gates shall be indicated and the compass  
32 direction shall be shown.

33 (6) A description of the period of time in which operations will  
34 be carried out.

35 (b) Notwithstanding subdivision (a), the department is not  
36 required to process the notification until the timber harvesting plan  
37 and the proper notification fee have both been received by the  
38 department.

39 ~~(c) Any agreement issued pursuant to this section shall be~~  
40 ~~effective on the earliest date specified in paragraph (6) of~~

~~subdivision (a) of Section 1611 unless a later effective date is specified in the agreement.~~

*(c) The date on which the term of an agreement issued pursuant to this section begins shall be the date timber operations first commence, unless the agreement specifies a later beginning date.*

1612. The department may suspend or revoke an agreement at any time if it determines that an entity is not in compliance with the terms of the agreement. The department shall adopt regulations establishing the procedure for suspension or revocation of an agreement. *The procedure shall require the department to provide to the entity a written notice that explains the basis for a suspension or revocation, and to provide the entity with an opportunity to correct any deficiency before the department suspends or revokes the agreement.*

1613. This chapter does not require the department to process a notification or issue the agreement if ~~it has notified an entity, in writing, that the activity covered by the agreement would violate any provision of the Fish~~ *one or both of the following occur:*

*(a) The department notifies the entity, in writing, that the entity is in violation of, or the activity described in the notification violates, any provision of the Fish and Game Code or the regulations adopted to implement that code. If the department provides that notice to the entity, the department shall have one year to refer the violation to the Office of the Attorney General, district attorney, or city attorney for prosecution if the violation is not remedied. If the department fails to refer the violation within one year from the date it notifies the entity of the violation, the department shall process the notification in accordance with the procedures established in Section 1603 unless the entity withdraws the notification. Nothing in this chapter section limits the department's authority to refer, or otherwise prosecute the violation at any time after the expiration of that one-year period.*

*(b) A state or federal government agency has notified the department, in writing, that the entity is in violation of, or the activity described in the notification violates, another state statute or a federal statute that has as its purpose the protection of fish and wildlife resources. If the department provides this notice to the entity, the department shall process the notification in accordance with the procedures established in Section 1603 after receiving notice, in writing, from the state or federal government agency that*

1 *the violation has been remedied, unless the entity withdraws the*  
2 *notification.*

3 1614. If the entity is required to perform work subject to this  
4 chapter pursuant to a court or administrative order or notice, the  
5 entity shall include the measures proposed by the department to  
6 protect fish and wildlife resources in the agreement. Those  
7 measures are not subject to arbitration.

8 ~~1615. (a) Any entity that violates any provision of this~~  
9 ~~chapter is subject to a civil penalty of not more than twenty-five~~  
10 ~~thousand dollars (\$25,000) for each violation.~~

11 1615. (a) *Any entity that violates any provision of this*  
12 *chapter is subject to a separate civil penalty, as specified in this*  
13 *section, for each violation. If the entity charged with violating this*  
14 *chapter is a person, including any employee, agent, or contractor*  
15 *of a state or local governmental agency or public utility, the person*  
16 *shall be subject to a civil penalty of not more than twenty-five*  
17 *thousand dollars (\$25,000). Any state or local governmental*  
18 *agency or public utility charged with violating this chapter shall*  
19 *be subject to a civil penalty of not more than one hundred thousand*  
20 *dollars (\$100,000).*

21 (b) The civil penalty imposed pursuant to subdivision (a) is  
22 separate from, and in addition to, any other civil penalty imposed  
23 pursuant to this section or any other provision of the law.

24 (c) *In determining the amount of any civil penalty imposed*  
25 *pursuant to this section, the court shall take into consideration all*  
26 *relevant circumstances, including, but not limited to, the nature,*  
27 *circumstance, extent, and gravity of the violation. In making this*  
28 *determination, the court may consider the degree of toxicity and*  
29 *volume of the discharge, the extent of harm caused by the violation,*  
30 *whether the effects of the violation may be reversed or mitigated,*  
31 *and with respect to the entity, the ability to pay, the effect of any*  
32 *civil penalty on the ability to continue in business, any voluntary*  
33 *cleanup efforts undertaken, any prior history of violations, the*  
34 *gravity of the behavior, the economic benefit, if any, resulting from*  
35 *the violation, and any other matters the court determines that*  
36 *justice may require.*

37 (d) *Every civil action brought under this section shall be*  
38 *brought by the Attorney General upon complaint by the*  
39 *department, or by the district attorney or city attorney in the name*



1 *of the people of the State of California, and any actions relating*  
2 *to the same violation may be joined or consolidated.*

3 *(e) (1) In any civil action brought pursuant to this chapter in*  
4 *which a temporary restraining order, preliminary injunction, or*  
5 *permanent injunction is sought, it is not necessary to allege or*  
6 *prove at any stage of the proceeding any of the following:*

7 *(A) That irreparable damage will occur if the temporary*  
8 *restraining order, preliminary injunction, or permanent injunction*  
9 *is not issued.*

10 *(B) That the remedy at law is inadequate.*

11 *(2) The court shall issue a temporary restraining order,*  
12 *preliminary injunction, or permanent injunction in a civil action*  
13 *brought pursuant to this chapter without the allegations and*  
14 *without the proof specified in paragraph (1).*

15 *(f) All civil penalties collected pursuant to this section shall not*  
16 *be considered fines or forfeitures as defined in Section 13003, and*  
17 *shall be apportioned in the following manner:*

18 *(1) Fifty percent shall be distributed to the county treasurer of*  
19 *the county in which the action is prosecuted. Amounts paid to the*  
20 *county treasurer shall be deposited in the county fish and wildlife*  
21 *propagation fund established pursuant to Section 13100.*

22 *(2) Fifty percent shall be distributed to the department for*  
23 *deposit in the Fish and Game Preservation Fund. These funds may*  
24 *be expended to cover the costs of any legal actions or for any other*  
25 *law enforcement purpose consistent with Section 9 of Article XVI*  
26 *of the California Constitution.*

27 *1616. Any agreement executed by the department prior to*  
28 *January 1, 2004, shall be subject to, and shall be governed by, the*  
29 *provisions of this chapter that were in existence prior to that date.*

30 SEC. 3. No reimbursement is required by this act pursuant to  
31 Section 6 of Article XIII B of the California Constitution because  
32 the only costs that may be incurred by a local agency or school  
33 district will be incurred because this act creates a new crime or  
34 infraction, eliminates a crime or infraction, or changes the penalty  
35 for a crime or infraction, within the meaning of Section 17556 of  
36 the Government Code, or changes the definition of a crime within  
37 the meaning of Section 6 of Article XIII B of the California  
38 Constitution.

O